

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

HUMDY T. ELSAYID
1850 Batson Avenue, No. 67
Rowland Heights, CA 91748

Physical Therapist License No. PT 9215,

Respondent.

Case No. D2-1995-58022

OAH No. L2002120417

PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California on June 30, 2003.

Richard D. Marino, Deputy Attorney General, represented complainant. Humdy T. Elsayid, respondent, appeared personally and was represented by Edgardo Gonzalez, attorney at law.

The parties presented oral and documentary evidence, and submitted the matter subject to the filing of written argument on or before July 15, 2003. Such written argument has been received and considered, and the matter now stands submitted for decision. The Administrative Law Judge finds, concludes and recommends a disposition of this matter as follows:

Findings of Fact

1. Steven K. Hartzell, Complainant caused the Petition to Revoke Probation on file herein to be filed and served while acting solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On August 8, 1979, the said Board issued Physical Therapist License No. PT9215 to Humdy T. Elsayid, respondent herein. The therapist license was in effect at all times relevant to the charges brought herein.

3. In a disciplinary matter entitled *In the Matter of the Accusation against Humdy T. Elsayid*, Case No. D1-95-58022, the said Board issued a decision, effective June 3, 1999, in which respondent's license was revoked. After further proceedings had in the case, the decision was modified so as stay respondent's license revocation, and to place him on probation for five years commencing March 8, 2001, subject to several terms and conditions, which will be more specifically described hereinafter.

4. Respondent was supervised on probation by an agent of the Board, who initially went over each and every condition, Respondent was required to obey. Although he seemed to understand what was expected of him, he nonetheless required close supervision and monitoring. Although seemingly courteous and cooperative in his face-to-face meetings with his supervisor, in actuality he required continued prompting before he would move to take any of the steps to comply with the various probationary terms. His behavior may charitably be described as being "passive-aggressive." Although respondent, at the time of his hearing, had taken steps toward compliance with most of the probationary conditions, the fact was that very few of these conditions were honored by him during the term we are here concerned with, March 8, 2001 through June 30, 2003.

5. During the subject probationary term respondent's compliance with the following conditions varied from irregular, to late, to none. For example:

a) He failed to submit a plan of practice in which his practice would be monitored by an approved monitor who would provide periodic reports to the Board, until April 29, 2003 (Condition 7).

b) He declined to notify patients of his probation because it would jeopardize his employment. (Condition 11).

c) He was required to submit to biological fluid testing in connection with a diversion program administered by the Board. However, respondent never entered the program, and, thus, never submitted to random biological fluid testing. (Conditions 14 and 15).

d) Respondent was required to submit a community service program for approval. He never did so. His probation supervisor suggested a specific program, but Respondent subsequently stated that he had applied to the program, but was turned down because of Respondent's pre-existing lower back problems. (Condition 16).

e) Respondent did not undergo a medical evaluation by a Board approved physician and surgeon within 30 days or at any other time after the effective date of the conditional agreement extending his probation. On June 27, 2003, at his last probation interview had before the hearing in this matter, Respondent presented a copy of a medical report generated by Respondent's own physician prepared by the doctor on *April 23, 1996*, seven years before the interview!

f) Respondent paid some, but not all, of the probation monitoring costs as they became due. At the time of the filing of the instant petition to revoke probation, respondent was in arrears in at least the sum of \$1,300. He paid \$1,300. to the Board on or about June 28, 2003. (Condition 19)

g) Respondent paid some, but not all of the \$50.00 monthly installments toward the outstanding cost recovery of \$3,000. set forth as Condition 20 of the Conditional Agreement.

h) Respondent failed to provide evidence that he had furnished any of his employers with written notice that he was subject to a probationary order. (Condition 27)

i) Respondent did not within 90 days, or at any other time prior to the filing of the pending petition to revoke probation, take and pass the written examination on the laws and regulations governing the practice of physical therapy. On June 27, 2003, Respondent told his probation supervisor that he had registered to take the required examination in July 2003. (Condition 36)

6. The Board has incurred prosecution costs related to the administrative hearing in this matter, and over and above its costs of investigation and probation monitoring, in the sum of \$2,832.50 (see Exh. #13, Certification of Costs).

7. Respondent testified in his own behalf. In sum, he felt it was the duty of his probation supervisor to suggest workable community service options, and that the supervisor had placed Respondent "in limbo" by failing to do so when informed of the Los Angeles Mission's decision to decline acceptance of respondent's service due to his back problem. He presented credible and competent evidence of his financial problems, including bankruptcy, which interfered with his ability to make timely probation monitoring costs and cost recovery payments to the Board. However, relying on asserted conversations said to have been had with his probation supervisor, and a Deputy Attorney General, he "felt" he did not have to complete a diversion program since he had participated in a court ordered drug treatment program in connection with his criminal conviction. He states he now understands his responsibility to make sure that each and every term of probation is satisfied.

8. The preceding facts of this case support the argument of Deputy Attorney General Richard D. Marino as to Respondent's candidacy for further probation. Although his probation supervisor went over and each all of the conditions of probation, respondent, when faced with the petition to revoke his probation, now claims not to have understood them. He was anything but cooperative; indeed, he did not contact anyone concerning his probation until several months had passed following the effective date of its inception. Finally, his over-arching attitude is captured in his willful failure to notify his patients of his probation because the patients would not continue to see him for treatment were they to know of his probationary status. Clearly, Respondent is not a candidate for probation.

Conclusions of Law

The Board is authorized by law to issue orders, after notice and hearing, and a determination of good cause, revoking or otherwise disciplining, either outright, or subject to probationary terms, licenses issued by it to practitioners of physical therapy (Section 2660, Business and Professions Code).

The Board issued its order upon a “Stipulated Settlement and Disciplinary Order” effective June 3, 1999, in the case entitled “*In the Matter of Accusation Against Humdy T. Elsayid*, Case No. D1-95-58022, and incorporated by reference in the “Conditional Agreement For A Five Year Extension of Probation,” adopted by the Board, effective March 8, 2001, in the case entitled *In the Matter of Petition to Revoke Probation against Humdy T. Elsayid*, Case No. D1-95-580222. Paragraph 33 therein provides:

“Violation of Probation If respondent violates probation in any respect the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. . .”

As set forth in the preceding Findings of Fact, Respondent has violated several conditions of his probation.

It has been established that cause exists for issuance of an order revoking the grant of probation and the concurrent order of probation pursuant to Section 2660 of the Business and Professions Code.

It has been further established that the Board has incurred actual and reasonable costs of prosecution in this matter in the sum of \$2,832.50 attributable to its representation in these proceedings by the Attorney General’s office; said costs are in addition to the costs of probation monitoring and investigation referred to in the forgoing Findings of Fact. The Board is entitled to an order that such costs be reimbursed by Respondent. (Section 2661.5, Business and Professions Code)

Order

It is hereby ordered that the previous order of the Board staying its order of license revocation and granting probation to respondent is hereby vacated and set aside; Physical Therapy License No. 9215 issued to Respondent Humdy T. Elsayd is hereby revoked.

It is further ordered that Humdy T. Elsayid pay the sum of \$2,832.50 to the Physical Therapy Board.

Dated: August 11, 2003

Original Signed By:
PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

